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Monterey Bay Air Resources District

CONSIDERATION OF REVISIONS TO DISTRICT RULE 438 STAFF REPORT FOR PUBLIC REVIEW Date of Release: October 15, 2021

**Proposed Date/Time of Public Hearing on Rule Adoption: Board of Directors Meeting,
November 17, 2021 - 1:30 P.M.**

TO:	Interested Parties
SUBJECT:	Consideration of Revisions to District Rule 438 (Open Outdoor Fires)
REQUEST:	Comments on Proposed Rule 438 Revisions

DISCUSSION

Staff is proposing revisions to Rule 438 to improve clarification and cohesiveness by restructuring certain text and subsections which will help with rule comprehension and enforceability. The proposed revisions will also help reduce emissions by prohibiting the burning of driftwood. The Board will also consider minor revisions to Rule 438 and addition of some definitions. The revised rule becomes effective upon adoption by the Board.

PROPOSED RULE 438 MODIFICATIONS

Minor clarifications, restructuring for continuity and minor grammatical changes have been made to the Rule, the most important changes being:

- Part 3: Revised burn authorization requirement for non-SLV ag and prescribed burners
- Addition of Section 3.1.2 - Prohibition of burning driftwood
- Definition additions and amendments as described below.

Definition Additions and Amendments:

Definitions added:

- **Accelerant**
- **Adult**
- **Conservation Burn Kiln**
- **Disposal**
- **Driftwood**
- **Fire Protection Agency**

Amendments made to existing definitions:

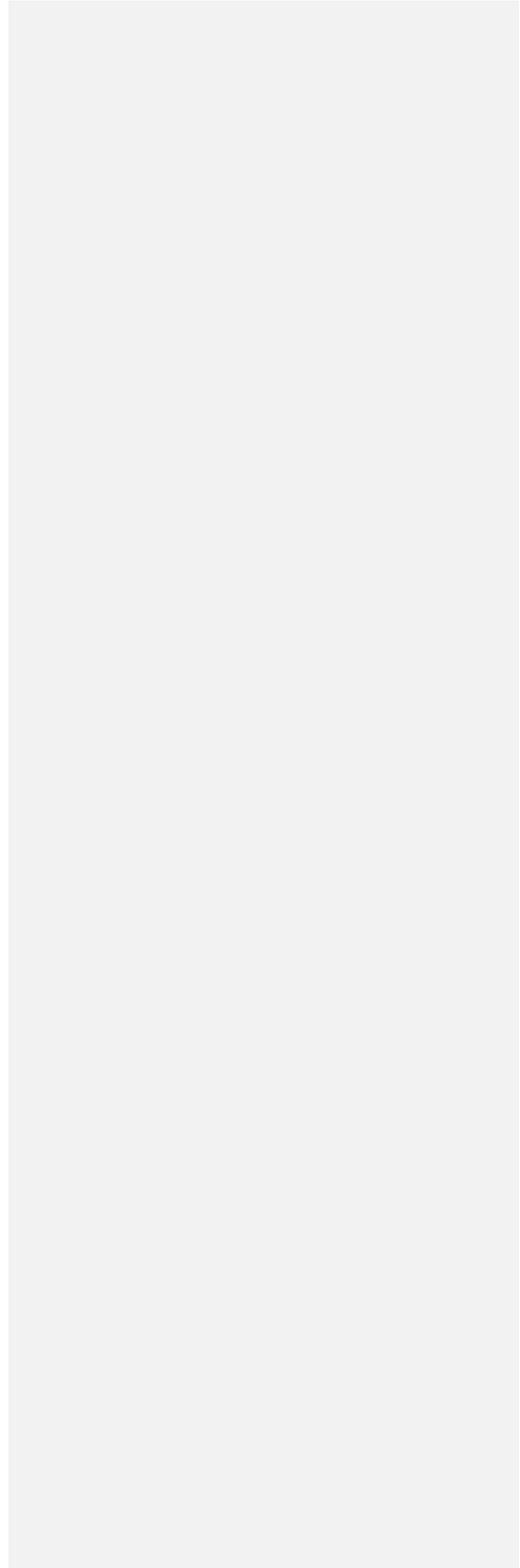
- **Approved Ignition Device:** definition expanded to include liquid petroleum gas, butane, diesel oil burners, or flares
- **Burn Barrel** definition renamed "Burn Barrel/Container"

- **Mechanized Burning** definition expanded to include Air Curtain Burners, Air Curtain Incinerators and Trench Burners,
- **Warming Fire**: Minimum ambient outdoor temperature requirement established at 50° F and pile size limitations of 2x2 in residential areas and 4x4 in rural areas,
- **Waste** definition expanded to include the following types of waste: all interior and exterior house and trim paints, enamels, varnishes, lacquers, stains, primers, sealers, roof coatings, wood preservatives, shellacs, paint thinners and other paints or paint-like products or any solvents, metals; motor oils, motor solvents,
- **Woody Waste from Development** definition was renamed to “Development Burn”

The attached staff report provides additional information on the proposed Rule 438 changes.

ATTACHMENT

STAFF REPORT





**MONTEREY BAY
AIR RESOURCES DISTRICT**

STAFF REPORT

Proposed Revisions to
Rule 438 (Open Outdoor Fires)

**Draft
for Public Comment**

November 17, 2021

Prepared by: Christine Duymich, Air Quality Planner
David Frisbey, Planning and Air Monitoring Manager

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Background	Staff is proposing revisions to District Rule 438 to address the California Air Resources Board (ARB) The District is also proposing minor revisions to Rule 438 definitions for clarification. The revised rule becomes effective upon adoption by the Board.
Authority	The District is authorized to adopt new and revised rules pursuant to California Health and Safety Code (HSC) Sections 40001 and 40702.
Significant Proposed Provisions	<p>To facilitate the interpretation of the proposed revisions to Rule 438, the text proposed to be deleted is indicated with overstriking (overstriking), and the text proposed to be added is indicated with underlining (<u>underlining</u>). The major revisions include:</p> <ul style="list-style-type: none">• Part 3: Revised burn authorization requirement for non-SLV ag and prescribed burners• Addition of Section 3.1.2 - Prohibition of burning driftwood• Definition additions and amendments as described below.• Additions to subsections 1.3.2.1-1.3.2.4 for consistency and enforceability.• Addition of definitions for accelerant, adult, conservation burn kiln, disposal, driftwood, and fire protection agency.• Expanded upon and/or revised the following definitions: approved ignition device, burn barrel, mechanized burning, warming fire, waste, and woody waste from development burn.
Affected Sources and Potential Fiscal Impact	The proposed regulatory action described herein is exempt from the requirements of HSC Section 40728.5.
Socioeconomic Effects, Alternative Analysis, and California Environmental Quality Act (CEQA) Status	The proposed rule amendments incorporate already enforced state standards, clarify existing requirements, and prohibit the burning of drift wood; as such, the proposed amendments do not significantly affect air quality or emission limitations. Additionally, no significant emission reductions or costs are associated with this rule amendment project. Therefore, this rule amending project does not require a socioeconomic impact analysis (HSC § 40728.5(a)), a rule consistency analysis (HSC § 40727.2), and is exempt from California Environmental Quality Act (CEQA) analysis (CEQA guidelines California Code of Regulation § 15061(b)(3)).
District Implementation	Notice of the adoption of the revised rule will be made to all potentially affected sources, as part of the District’s normal rule implementation process.

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Fiscal Impact upon District There are no fiscal impacts expected upon the District.

Proposed Meeting Schedule November 17, 2021; 1:30 PM Board Adoption Hearing MBARD Board Room

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APPENDIX A

PROPOSED RULE

438 (Open Outdoor Fires)

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RULE 438. OPEN OUTDOOR FIRES

(Adopted 4-16-2003; Revised 9-15-2004; October 19, 2011; September 19, 2012; and Proposed February 19, 2014, and ~~October~~ July 2021.)

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PART 1 GENERAL

1.1 Purpose

The purpose of this Rule is to codify requirements and standards regarding the use of open outdoor fires within the boundaries of the Monterey Bay ~~Unified Air Pollution Control~~ Resources District (Air District).

1.2 Applicability

The provisions of this Rule shall apply to all persons who set or maintain open outdoor fires within the boundaries of the Air District.

1.3 Exemptions

1.3.1 Exemptions from Section 3.1 (General Prohibition)

The following types of open outdoor fires are exempted from the provisions of Section 3.1 of this Rule, except as provided at Subsection 3.1.1.

1.3.1.1 With notification of the Air Pollution Control Officer, except in emergencies, when such fire is set or permission for such fire is given in the performance of the official duty of any public officer, and such fire in the opinion of such officer is necessary:

1.3.1.1.1 for the instruction of public employees in the methods of fighting fire; or

1.3.1.1.2 for disposing of Russian thistle (*Salsola kali*); or

1.3.1.1.3 for the setting of backfires necessary to save life or valuable property pursuant to Section 4426 of the Public Resources Code; or

1.3.1.1.4 for the abatement of fire hazards pursuant to Section 13055 of the California Health and Safety Code which cannot be abated by other means; or

1.3.1.1.5 for disease or pest prevention, where there is an immediate need for and no reasonable alternative to burning.

1.3.1.2—With notification of the Air Pollution Control Officer, except in emergencies, when such fire is set pursuant to a smoke management permit on property used

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for industrial purposes for the purpose of instruction of employees in methods of fighting fire.

- 1.3.1.3 Agricultural burning necessary to maintain and continue an agricultural operation, including:
 - 1.3.1.3.1 fires set in the course of any agricultural operation in the growing of crops, or raising of fowls, animals or bees;
 - 1.3.1.3.2 fires for the control and disposal of agricultural wastes;
 - 1.3.1.4 ~~1.3.1.4~~ With notification of the Air Pollution Control Officer, except in emergencies, burning for right-of-way clearing by a public entity or utility where access by chipping equipment is not available by existing means, or for levee, reservoir, and ditch maintenance.
 - 1.3.1.5 The personal use of pyrotechnics (as allowed by local fire jurisdictions) or for the creation of special effects during organized community events.
 - 1.3.1.6 ~~1.3.1.6~~ The use of pyrotechnics during the filming of motion pictures, videotaping of television programs or other commercial filming or video production activities.
 - 1.3.1.7 ~~1.3.1.7~~ Contraband in the possession of public law enforcement personnel provided they demonstrate that open burning is the only reasonably available method for safely disposing of the material.
 - ~~1.3.1.8~~ ~~1.3.1.8~~ Disposal of infectious waste, other than hospital waste, upon the order of the County Health Officer to abate a public health hazard.

1.3.2 Exemptions from Section 3.2 (Prohibition on Use of Open Outdoor Fires for Entities Other Than Single or Two-Family Dwellings)

The following types of open outdoor fires are exempted from the provisions of Section 3.2.

~~1.3.1.8~~ ~~Backyard burning (as defined in Section 2.9) during Burn Season (as defined in Section 2.13);~~

1.3.2.1 Cooking fires (as defined in Section 2.16);

1.3.2.2 Recreational fires (as defined in Section 2.44);

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~~1.3.2.3~~ 1.3.2.3 ~~Warming fires (as defined in Section 2.52);~~

~~1.3.2.4~~ 1.3.2.4 ~~Development Burn (as defined in Section 2.18);~~

~~1.3.2.1.3.3~~ Exemptions from Subsection 3.3.1 (Smoke Management Permit Requirement)

The following types of open outdoor fires are exempted from the requirement to receive written smoke management permits from the Air District or local fire protection agency under subsection 3.3.1 of this Rule. This exemption does not affect any burn permits that may be required by local fire agencies.

~~1.3.2.1.3.3.1~~ ~~1.3.2.1~~ 1.3.3.1 fires described in subsection 1.3.1.1 where the entity conducting the fire is the permitting agency;

~~1.3.2.2.1.3.3.2~~ ~~1.3.2.2~~ 1.3.3.2 fires described in subsection 1.3.1.5 (personal use of pyrotechnics and for organized community events).

~~1.3.2.3.1.3.3.3~~ ~~1.3.2.3~~ 1.3.3.3 fires described in subsection 1.3.1.7 (disposal of contraband).

~~1.3.2.4.1.3.3.4~~ ~~1.3.2.4~~ 1.3.3.4 fires described in subsection 1.3.1.8 (disposal of infectious waste).

~~1.3.2.5.1.3.3.5~~ ~~1.3.2.5~~ 1.3.3.5 cooking fires (as defined in Section 2.14).

~~1.3.2.6.1.3.3.6~~ ~~1.3.2.6~~ 1.3.3.6 recreational fires (as defined in Section 2.39) that are less than 3-feet in diameter and 2-feet in height.

~~1.3.2.7.1.3.3.7~~ ~~1.3.2.7~~ 1.3.3.7 warming fires (as defined in Section 2.46);

~~1.3.2.8.1.3.3.8~~ ~~1.3.2.8~~ 1.3.3.8 fires used to instruct in the proper operation of fire extinguishers.

~~1.3.3.1.3.4~~ Exemptions from Section 3.4 (Burn Days and "No-burn" Days)

~~1.3.3.1.3.4.1~~ ~~1.3.3.1~~ 1.3.4.1 ~~C~~ooking fires (as defined in Section 2.16);

~~1.3.3.2.1.3.4.2~~ ~~1.3.3.2~~ 1.3.4.2 ~~R~~ecreational fires (as defined in Section 2.43);

~~1.3.3.3.1.3.4.3~~ ~~1.3.3.3~~ 1.3.4.3 warming fires (as defined in Section 2.52);

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- ~~1.3.3.4~~1.3.4.1~~1.3.4.4~~ — fires described in subsection 1.3.1.5 (personal use of pyrotechnics and for organized community events);
- ~~1.3.3.5~~1.3.4.5 fires described in subsection 1.3.1.7 (disposal of contraband);
- ~~1.3.3.6~~1.3.4.6 fires described in subsection 1.3.1.8 (disposal of infectious waste);
- ~~1.3.3.7~~1.3.4.7 fires described in subsection 1.3.1.1.1 (fire-fighting instruction for public employees);
- ~~1.3.3.8~~1.3.4.8 fires described in subsection 1.3.1.2 (industrial fire-fighting instruction);
- ~~1.3.3.9~~1.3.4.9 agricultural fires set upon Air Pollution Control Officer approval where denial of such approval would threaten imminent and substantial economic loss as provided in California Health and Safety Code Section 41862; and
- ~~1.3.3.10~~1.3.4.10 a prescribed burn project which has been declared a test burn jointly by the California Air Resources Board and the Air District for the purpose of evaluating alternative criteria for making burn day decisions.
- ~~1.3.3.11~~1.3.4.11 fires used to instruct in the proper operation of fire extinguishers.

~~1.3.4.1~~1.3.5 Exemptions from Section ~~3.7~~6 (Standards for Vegetative Materials to be Burned)

Fires qualifying for exemption under subsection 1.3.3.~~8~~9 may be exempted by the Air Pollution Control Officer from certain requirements of Section ~~3.7~~6.

~~1.3.5.1~~1.3.6 Limited Exemption For Invasive Plant Species

If allowed for in the Permit issued pursuant to Section 3.3, Invasive Plant Species may be exempt from the material drying times contained in Subsection 3.7.1, 3.7.3, 3.7.4, and 3.7.5.

~~1.3.1.4~~ Effective Date of Rule

The Rule in its present form is effective on ~~February~~November 17, 2021~~14~~.

~~1.4.1.5~~ References

The requirements of this Rule arise from the provisions of:

- 1.5.1 California Health and Safety Code Sections 39011 *et seq.*, 39665 *et seq.*, 41800 *et seq.*, 41850 *et seq.*; and
- 1.5.2 California Code of Regulations, Title 17, Subchapter 2, Sections 80100 *et. seq.* and 93113 *et seq.*

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PART 2 DEFINITIONS

2.1 Accelerant

Any ignitable or flammable liquid used to aid the spread of fire.

2.2 Adult

In the state of California, the age at which a person is considered an adult, with all the attendant rights and responsibilities of adulthood, is when he or she reaches 18 years of age.

~~2.12.3~~ Agricultural Burning

As defined in California Health and Safety Code Section 39011 as an open outdoor fire:

- used in agricultural operations, forest management, range improvement, improvement of land for wildlife and game habitat, disease or pest prevention;
- used in the operation or maintenance of a system for the delivery of water for the purposes specified above;
- used in wildland vegetation management burning.

~~2.22.4~~ Agricultural Operations

A person, partnership, educational institution or corporation engaged in the clearing and preparation of land for the purpose of growing and harvesting crops or raising fowl or animals for providing a livelihood, commercial sale, education or research; or a person, partnership, educational institution or corporation engaged in the management of range or forest lands for purposes of research, education, silviculture, grazing and habitat improvement.

~~2.32.5~~ Agricultural Waste Burning

Refers to open burning in agricultural operations per California Code of Regulations, Title 17, Subchapter 2, Article 1, Section 80101(w). This includes the burning of materials not produced wholly from such operations, but which are intimately related to the growing or harvesting of crops and which are used in the field, except the following: plastics, petroleum products and petroleum wastes; construction and demolition debris; tires; and motor vehicle bodies and parts.

~~2.42.6~~ Air District

The Monterey Bay ~~Unified Air Pollution Control~~ Resources District, unless otherwise noted.

~~2.52.7~~ Approved Ignition Device

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An instrument or material that will ignite open fires without the production of black smoke by the ignition device- (liquid petroleum gas, butane, diesel oil burners, or flares).

2-62.8 Availability of Yard Waste Pick-up

Pick-up provided by an organized waste disposal service along county maintained roads.

2-72.9 Backyard Burning

Fires for disposal of dry natural vegetation originating from and being burned on the premises of a single- or two-family dwelling.

2-82.10 Brush-treated

The material to be burned has been felled, crushed or uprooted with mechanical equipment, has been desiccated with herbicides, or is dead.

2-92.11 Burn Barrel /~~Container-Cage~~

A metal or other fireproof or nonflammable container used to hold combustible or flammable waste materials so that they can be ignited outdoors for the purpose of disposal.

2-102.12 Burn Day

Any day on which agricultural burning, including prescribed burning, is not prohibited by the California Air Resources Board, and agricultural burning, including prescribed burning, is authorized by the Air District consistent with the Smoke Management Guidelines for Agricultural and Prescribed Burning, set forth in Sections 80100 - 80330 of Title 17 of the California Code of Regulations. Additional restrictions may be imposed by the Air District for the San Lorenzo Valley Smoke Sensitive Area and other areas within the Air District even on California Air Resources Board declared "burn days".

2-112.13 Burn Season

The time during the year during which backyard burning is allowed. The burn season shall begin on December 1 each year and shall continue through April 30 of the following year.

2-122.14 Census Zip Code

A Zip Code® tabulation area, a statistical geographic entity that approximates the delivery area for a U.S. Postal Service five-digit Zip Code. Census zip codes are aggregations of census blocks that have the same predominant Zip Code associated with the mailing addresses in the U.S. Census Bureau's Master Address File. Census zip codes do not precisely depict Zip Code delivery areas, and do not include all Zip Codes used for mail delivery. For the purposes of this Rule, census zip codes are referenced to the most recent national decennial census completed by the U.S. Census Bureau.

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2.132.15 Combustible

Any substance capable of burning, or any substance that will readily burn.

2.16 Conservation Burn Kiln

A specially manufactured, fireproof metal container used to convert woody materials into biochar.

2.142.17 Cooking Fire

A fire utilized for the cooking of food for human consumption. A cooking fire shall be no larger than the cooking grill, no longer nor wider than the roasting spit, or larger in dimension than the cooking pit.

2.152.18 Designated Agency

Any agency, other than the Air District, designated by the California Air Resources Board as having authority to issue agricultural burning permits. The U. S. Forest Service and the California Department of Forestry and Fire Protection are so designated within their respective areas of jurisdiction.

2.19 Development Burn

Woody waste from trees, vines or bushes or natural vegetation grown on the property being developed for commercial or residential purposes.

2.20 Disposal

The process of reduction of material through the means of fire.

2.162.21 Dried Material

Vegetation that has gone through a process of drying-out by allowing it to rest for a period of time after being cut, such that the moisture content is sufficiently low to ensure efficient combustion and minimize the amount of smoke emitted.

2.22 Driftwood

Pieces of untreated natural wood which has been in the ocean prior to washing ashore.

2.172.23 Excessive Smoke

Smoke emissions from open outdoor fires which may be creating a public nuisance and which could otherwise be avoided by arranging materials to increase aeration to the pile and by burning dried materials. Permit privileges may be revoked if excessive smoke is being generated by an open outdoor fire.

2.182.24 Extinguished

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An open outdoor fire that is not emitting any smoke, is cold to the touch, and no longer capable of regeneration.

2.192.25 Field Crop

A crop, other than fruits and vegetables, that is grown for agricultural purposes; “cotton, hay, and grain are field crops”.

2.202.26 Fire Habitat Restoration

Restore the function and resiliency of a fire adapted ecosystem.

2.242.27 Fire Hazard Reduction Burn

A burn conducted or ordered by a public fire agency for reducing vegetation that has been determined to pose a fire risk to the public and cannot be abated by any other means in accordance with Health and Safety Code Section 41801(a). A fire hazard reduction burn cannot be used to circumvent other open burning requirements, must only be used to resolve a fire hazard and must not be of a recurring nature. Structures can only be burned as part of a fire training exercise conducted by a federal, state, or local fire protection agency. Hazard reduction burns differ from all other forms of prescribed and backyard burns.

2.28 Fire Protection Agency

An agency with the responsibility and authority to protect people, property, and the environment from fire, and having jurisdiction within a district or region.

2.222.29 Flammable

Capable of catching fire easily, or combustible.

2.232.30 Forest Management Burning

The use of open outdoor fires, as part of a forest management practice, to remove forest debris or for forest management practices which include timber operations, silvicultural practices or forest protection practices.

2.242.31 Fuels Management Burning

Burning of vegetation in piles or broadcast burns done to reduce fire fuels for fire hazard reduction or fire habitat restoration, as compared to Range Improvement Burning, or, Wildlife Habitat Management Burning, or, Development Burning.

2.252.32 Household Rubbish

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Solid, semisolid or liquid waste from materials used or consumed in a human dwelling. This includes materials such as animal or vegetable putrescible wastes (garbage) and nonputrescible wastes (rubbish), including discarded materials resulting from normal residential activities.

2.262.33 Incorporated Place

The city, town, municipality or village reported to the U.S. Census Bureau as being legally in existence under California law at the time of the most recent national decennial census completed by the U.S. Census Bureau.

2.272.34 Invasive Plant Species

A plant species that is not native to the ecosystem under consideration whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

2.282.35 Marginal Burn Day

Refers to a day when limited amounts of agricultural burning, including prescribed burning, for individual projects in specific areas for limited times is not prohibited by the California Air Resources Board and burning is authorized by the Air District, as defined in California Code of Regulations, Title 17, Subchapter 2, Article 1, Section 80101(n). The Air District may allow permitted backyard burns on marginal burn days.

2.36 Mechanized Burning (e.g.: Air Curtain Burners, Air Curtain Incinerators, Trench Burners):

Refers to any mechanized devices that uses forced air to accelerate combustion.

2.37 Monterey Peninsula/Carmel Valley Smoke Sensitive Area (MP/_CV SSA)

The MP/CV SSA is delineated by the following Township and Range coordinates, or Sections thereof, based on the Mount Diablo Meridian (see also Figure 1 below):

- a) All of T15S, R1W.
- b) T15S, R1E, Sections 19, 20, 21, and 28 thru 33.
- c) All the rule).
- d) T16S, R1E, Sections 4 thru 9, and 13 thru 36.
- e) T16S, R2E, Sections 18, 19, and 26 thru 35.
- f) T17S, R1W, Sections 1, 2, 11, 12, 13, 14, and 24.
- g) T17S, R1E, Sections 1 thru 24.
- h) T17S, R2E, Sections 1 thru 24.

2.38 Natural Ignition

Ignition of a fire by the heat of decomposition of organic matter or by a lightning strike.

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2.39 Natural Vegetation

All plants, including but not limited to grasses, forbs, trees shrubs, flowers, or vines that grow in the wild or under cultivation. Natural vegetation excludes vegetative materials processed, treated or preserved with chemicals for subsequent human or animal use, including but not limited to processed or treated wood and wood products or paper products.

2.40 "No-burn" Day

Any day on which agricultural burning, prescribed burning, or backyard burning, is prohibited by the California Air Resources Board, or by the Air District, or by a local fire district for their jurisdiction.

2.41 Open Outdoor Fire

The burning of combustible material of any type outdoors in the open, not in any enclosure, where the products of combustion are not directed through a flue.

2.42 Organized Waste Disposal Service

Weekly curbside or roadside collection by a contracted waste hauler of residential waste in wheeled carts, standard trash cans, or garbage bags for single- or two-family dwellings, as distinguished from transfer station collection or commercial dumpster collection.

2.43 Population Density

The number of people per square mile within a census zip code. It is calculated as the number of people within a census zip code divided by the area of the census zip code after subtracting the population and area of all incorporated places within the census zip code.

2.44 Prescribed Burning

The planned application of fire to natural vegetation to achieve any specific objective on lands selected before that application. The planned application of fire may also include natural or accidental ignition. [California Health and Safety Code Section 39011(c)] For the purposes of this Rule, prescribed burning includes but is not limited to: burning of woody wastes from developments; fire habitat restoration; forest management burning; fuels management burning; range improvement burning; wildland vegetation management burning.

2.45 ———Processed or treated wood and wood products

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Wood that has been chemically treated to retard rot or decay, or wood that has been modified with glues, laminates, stains, finishes, paints or glosses for use in furniture or for construction purposes, including but not limited to plywood, particle board, fencing or railroad ties. For the purposes of this Rule, dimensional lumber that has been air-dried or kiln-dried, with no preservatives or finishes added, is not considered processed or treated wood.

2.46 Range Improvement Burning

The use of open outdoor fires for fire habitat restoration, to remove vegetation for a wildlife, game or livestock habitat or for the initial establishment of an agricultural practice on previously uncultivated land.

2.47 ~~Recreational Fires~~ |

Any fire for which the purpose is other than the disposal of the material being combusted, and which is used for ceremonial, educational, pleasure, religious or similar purposes.

2.48 Residential Burning

Fires for the disposal of dry, non-glossy paper and cardboard originating from and being burned on the premises of a single or two-family dwelling.

~~2.49~~ San Lorenzo Valley Smoke Sensitive Area (SLV SSA) |

The SLV SSA is delineated by the County of Santa Cruz general plan boundary for the San Lorenzo Valley and excludes areas within the Scotts Valley Fire Protection District (map reference: Santa Cruz County GIS staff, numbered 180-07, dated November 2007). The perimeter of the SLV SSA will be reviewed periodically by the Air District and may be modified, if deemed appropriate, based on meteorological and open burning related data.

See Figure ~~2-1~~ below. |

2.50 Smoke-Sensitive Area (SSA)

A populated area, an airport, a traveled road or highway, areas designated Class I for visibility standards, or any place where smoke can adversely affect the public health and welfare, as defined in the California Code of Regulations, Title 14, Section 1561.1.

2.51 Training Burn for Instruction of Public Employees

A public officer is authorized to set or permit a fire when such fire is, in his or her opinion, necessary for the instruction of public employees in the methods of fighting fire per Health and Safety Code Section 41801(b). A training burn typically involves burning less than 40 acres of vegetation. See also Sections 1.3.1, 1.3.2 and 1.3.3 above.

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2.52 Training Burn on Property Used for Industrial Purposes

A public officer is authorized to set a fire when such fire is, in his or her opinion, necessary for the instruction of employees in the methods of fighting fire, pursuant to permit, on property used for industrial purposes per Health and Safety Code Section 41801(c). See also Section 1.3.1.2 above.

2.53 Treated Wood

Wood that has been treated with a penetrating chemical to retard rot, infestation or decay. In California, such wood is often characterized by the presence of dimples that look like staple holes covering its surface. While not all treated wood is dimpled, all wood that has dimples is treated wood.

2.54 Warming Fire

———A fire which is used for ~~human comfort~~providing personal warmth at least every 15 minutes; when the ambient temperature is less than 50 degrees Fahrenheit. Warming fire size to be limited to 2-ft x 2-ft in size in residential areas and up to 4-ft x 4-ft in size in agricultural areas.

2.55 Waste

All discarded putrescible and nonputrescible solid, semisolid, and liquid materials, including but not limited to petroleum products and petroleum wastes; construction and demolition debris; coated wire, tires, tar; tar paper; ~~wood waste~~; processed or treated wood and wood products; ~~metals~~all interior and exterior house and trim paints, enamels, varnishes, lacquers, stains, primers, sealers, roof coatings, wood preservatives, shellacs, paint thinners and other paints or paint-like products or any solvents, metals; motor oils, motor solvents, motor vehicle bodies and parts; rubber; synthetics; plastics, including plastic film, twine and pipe; fiberglass; Styrofoam; garbage; trash; refuse; rubbish; disposable diapers; ashes; glass; industrial wastes; manufactured products; equipment; instruments; utensils; appliances; furniture; cloth; rags; paper or paper products; cardboard; boxes; crates; excelsior; offal; swill; carcass of a dead animal; manure; human or animal parts or wastes, including blood; fecal- and food-contaminated material.

2.56 Wet Materials

Visible moisture on the surface of materials ready to be burned or in the burn pile.

2.57 Wildland Vegetation Management Burning

The use of prescribed burning conducted by a private landowner, a public agency, or through a cooperative agreement or contract involving a public agency, to burn land predominantly covered with chaparral (as defined in Title 14, California Code of Regulations, Section 1561.1), trees, grass or standing brush.

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PART 3 GENERAL REQUIREMENTS AND STANDARDS FOR OPEN OUTDOOR FIRES |

3.1 General Prohibition

Except as otherwise provided in this Rule, no person shall ~~use open outdoor fires~~ within the boundaries of the Monterey Bay ~~Unified Air Pollution Control Resources~~ District, ~~for the purpose of disposal or burning of household rubbish and/or waste~~ (as defined in Part 2 of this Rule).

3.1.1 Notwithstanding the exemptions at Subsection 1.3.1 *et seq.*, no person shall use open outdoor fires within the boundaries of the Monterey Bay ~~Unified Air Pollution Control Resources~~ District for the purpose of disposal or burning of treated wood under any circumstances. However, the Air District may exempt specific lots of wood from this prohibition upon the request on any person who can prove to the Air District that the wood sought to be exempt, while chemically treated, does not contain arsenic, chromium or other chemical compound that substantially adds to the toxicity of the emissions from burning.

3.1.2 ~~No person shall burn driftwood (as defined in Section 2.22) in open outdoor fires within the boundaries of the Monterey Bay Air Resources District.~~

3.2 Prohibition on Use of Open Outdoor Fires for Entities Other Than Single or Two-Family Dwellings

Except as otherwise provided in this Rule, no entity other than single or two-family dwelling which is a non-business entity shall be authorized the use of open outdoor fires within the boundaries of the Monterey Bay ~~Unified Air Pollution Control Resources~~ District.

3.3 General Smoke Management Permit Requirements

3.3.1 No person shall set, or permit to be set, any open outdoor fire including agricultural fires without first obtaining an approved smoke management permit and daily authorization (as described in Section 3.5) from the Air District or local fire protection agency, except as provided in subsection 1.3.2 of this Rule. Fees may be collected by the Air District for processing smoke management permits for backyard burning after July 1, 2013.

3.3.2 In reviewing and approving a smoke management permit to conduct a burn, the Air District or local fire protection agency may limit the amount of such material that can be burned in any one day and the hours of the day during which material may be burned.

3.3.3 In full recognition of the fact that each local fire protection agency has the prerogative and responsibility to constrain or prohibit open burning altogether,

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fire protection agencies shall be authorized to issue smoke management permits on behalf of the Air District at their request.

~~3-33.4~~ Burn Days, "No-Burn" Days, and Marginal Burn Days

No person shall set, or permit to be set, any open outdoor fire on any day designated by the California Air Resources Board as a "no-burn" day, except as provided at subsection 1.3.3 of this Rule. Fires allowed pursuant to this Rule shall only be set during burn days as designated by the California Air Resources Board or by the Air District. The Air District may allow limited burning on California Air Resources Board designated marginal burn days.

~~3-43.5~~ Burn Authorization

No person shall set, or permit to be set, any ~~open outdoor fire~~ prescribed burn, agricultural burn, or backyard burn unless a burn authorization is provided by the Air District or the local fire jurisdiction. Verification of a burn day is sufficient authorization in areas outside of the San Lorenzo Valley Smoke Sensitive Area.

~~3-51.1~~ ~~Tracking of Materials Burned~~

~~All persons who set, or permit to be set, any open outdoor fire burn shall provide the Air District or the jurisdiction issuing the smoke management permit the type and quantity of materials burned.~~

3.6 —General Standards for Vegetative Materials to be Burned

All materials to be burned shall conform to the following requirements to ensure rapid and complete combustion to minimize smoke generation:

~~3-7-43.6.1~~ Materials to be burned shall be dry and reasonably free of visible surface moisture prior to burning.

~~3-7-23.6.2~~ Materials to be burned shall be reasonably free of dirt and soil.

~~3-7-33.6.3~~ Tree stumps more than six (6) inches in diameter shall have been dried for at least 180 days prior to burning. -(This does not apply to backyard burning where the burning of stumps six inches or more in diameter is prohibited).

~~3-7-43.6.4~~ Trees, branches and prunings more than two inches but equal to or less than six (6) inches in diameter shall have been dried for at least 60 days prior to burning.

~~3-7-53.6.5~~ Trees, branches and prunings equal to or less than two (2) inches in diameter and plant trimmings shall have been dried for at least 30 days prior to burning.

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~~3.7.6~~3.6.6 Wastes from field crops that are cut in a green condition shall have been dried for at least 10 days prior to burning.

~~3.7.7~~3.6.7 Material to be burned shall be arranged to provide adequate aeration to allow the material to burn with a minimum of smoke.

~~3.7.8~~3.6.8 The use of burn barrels or burn cages to burn materials is prohibited, unless authorized by the local fire agency with jurisdiction. Burn barrels / burn cages shall only be used to burn materials consistent with the provisions of Part 7 (Residential Burning).

~~3.7.9~~3.6.9 Material containing poison oak shall not be burned where in the opinion of the Air Pollution Control Officer the smoke from the burning operations could adversely affect adjacent or nearby residences.

~~3.7.10~~3.6.10 Only approved ignition devices shall be used for ignition.

~~3.7.11~~3.6.11 Burning shall not commence when the wind direction would blow smoke toward a Smoke Sensitive Area or populated area which would be adversely affected by the smoke.

3.7 Mechanized Burning

Mechanized burning, e.g., trench burning, air curtain burners, and conservation burn kilns may be used for the purpose of disposing of, or creating biochar, from agricultural wastes, or wood waste from trees, vines, bushes, or other wood debris free of non-wood materials as provided in Section 41812 of the California Health and Safety Code and as allowed by other provisions of this Rule.

3.8 Prohibition of Nuisances

Notwithstanding any other provision of this Rule, no fire shall constitute a nuisance as defined in Air District Rule 402 (Nuisances).

3.9 Revocation or Denial of a Smoke Management Permit

A Smoke Management Permit may be revoked or denied at the sole discretion of the APCO or their designee.

PART 4 ADDITIONAL REQUIREMENTS FOR BURNING OF AGRICULTURAL WASTES

The purpose of this Part is to codify standards and requirements for burning of agricultural wastes within the Air District. The provisions of this Part shall apply to all persons who set or maintain fires used for burning agricultural wastes within the Air District.

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4.1 Burning Hours

No field crop burning shall commence before 10:00 a.m. or after 5:00 p.m. of any day, unless local conditions indicate that other hours are appropriate. (California Health and Safety Code Section 80150(a)(2)).

4.2 Fertilizer and Pesticide Sacks or Containers

Empty fertilizer and pesticide sacks or containers may be burned on burn days only in the field where the sacks or containers are emptied.

4.3 Garlic Tops

The burning of garlic tops in harvesting operations is prohibited.

4.4 Tracking of Materials Burned

All persons who set, or permit to be set, any agricultural or prescribed burn shall provide the Air District or the jurisdiction issuing the smoke management permit the type and quantity of materials burned.

PART 5 ADDITIONAL REQUIREMENTS FOR PRESCRIBED BURNING

The purpose of this Part is to codify standards and requirements for prescribed burning within the Air District. The provisions of this Part shall apply to all persons who set or maintain fires used for prescribed burning within the Air District.

5.1 Requirements for All Prescribed Burning

5.1.1 Project Registration

Prescribed burn projects must be registered with the Air District annually or seasonally. Information to be submitted includes but is not limited to: project name; project location; approximate total number of tons (for piled material) or acres (for standing material) of vegetation; type of vegetation; expected time of year (which months) the burning project may be conducted; applicant contact information.

5.1.2 Smoke Management Permit Required

No person shall conduct or permit to be conducted any prescribed burning within the boundaries of the Air District without first having obtained a smoke management permit from the Air District and CAL FIRE or other designated agency with jurisdiction, as required by such agencies.

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5.1.3 Smoke Management Plan and Smoke Management Permit Application Form

Before a smoke management permit may be issued by the Air District for prescribed burning, a completed Smoke Management Plan and Smoke Management Permit Application form consistent with the requirements of Title 17 to mitigate and monitor smoke impacts, and describing how the burn is to be carried out, shall be submitted by the owner, or his/her agent, of the land on which the burn is proposed, to the Air District and be approved by the Air District. This information shall include a list of any "Smoke Sensitive Areas" (SSAs) within 10 miles of the burn, with compass directions to the nearest of eight prime compass points; and contingency measures to be followed in case of significant downwind smoke impacts from the project.

5.1.4 Daily Burn Authorization

Prescribed burns may only be conducted after receiving authorization from the Air District. The burner must receive authorization from the Air District any time within the 24 hours before burning by calling (831) 647-9411 during the Air District's normal business hours (Mondays through Fridays; 8:00 A.M. to 5:00 P.M.).

5.1.4.1 If the burn will be conducted on weekends or holidays, or if the burner cannot otherwise comply with the 24-hour requirement, the burner must contact the Air District before the burn during the Air District's normal business hours to receive Provisional Authorization. Provisional Authorization will allow the burn to be conducted on a burner-selected future date.

5.1.5 Restrictions on Poor Air Quality Days

No prescribed burns may be conducted on days when air quality conditions (including high ozone concentrations) have been predicted to result in smoke impacts or to be unacceptable for burning for the region.

5.1.6 Public Notification

Direct public notification of sensitive downwind receptors shall be required for prescribed burn projects with potentially significant air quality impacts.

5.1.7 Daily Emissions Allocation

The total emissions from all prescribed burn projects on each day in the air basin shall remain within the Air District's adopted Air Quality Maintenance Plan VOC and NOx emission inventories during the ozone season (May through October).

5.1.7.1 The Air Pollution Control Officer (APCO) may modify the above restriction on total emissions if limiting the proposed burn would: require multiple burns that would result in prolonged smoldering and expose

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sensitive receptors to air pollutants over multiple days; or, substantially increase costs; or, affect public services such as roadway access; or, be in an area where several smaller burns would be difficult to conduct and/or would require firebreaks that would increase erosion or landslide potential or disturb cultural resources or endangered plants or species.

5.1.8 Use of Approved Ignition Devices

The material shall be ignited only by devices and methods approved by the California Department of Forestry and Fire Protection and ignition shall be rapid as practicable within applicable fire control restrictions.

5.1.9 Certification by Department of Fish and Wildlife

Burning conducted primarily for improvement of land for wildlife and game habitats shall require the permittee to file with the Air District a statement obtained from the Department of Fish and Game certifying the burning is desirable and proper for the improvement of land for wildlife and game habitat.

5.1.10 Reporting of Actual Materials Burned

Within 30 days of completion of a prescribed burn project, the burner shall report to the Air District the date and amount of fuel actually consumed for each day of burning conducted. The reporting period may be reviewed by the Air District and may be reestablished, if deemed appropriate, based on the availability of a statewide electronic reporting system for prescribed burn projects.

5.2 Additional Requirements for ~~the Burning of Woody Wastes from~~ Development Burns

In addition to the requirements of Section 5.1 of this Rule, the following requirements apply to the burning of woody wastes from developments:

5.2.1 The purpose of this Section is to provide requirements for the disposal by burning of woody wastes from trees, vines, or bushes or natural vegetation grown on property being developed for commercial or residential purposes.

5.2.2 The provisions of this Section shall apply to all persons who set or maintain fires within the Air District for the burning of woody wastes on land being developed for commercial or residential purposes, provided that the wastes resulted from trees, vines, or bushes or other natural vegetation grown on the land being developed.

5.2.3 No person shall conduct or allow the conduct of burning of woody wastes on land being developed within the boundaries of the Air District without first obtaining a written smoke management permit from the Air District.

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5.2.4 After consideration of the amount of woody waste to be burned, the season of the year, the ambient air quality and the proximity of the waste to developed areas, the Air Pollution Control Officer may grant a smoke management permit to burn woody wastes from developments.

5.2.5 Where economically and technically feasible, brush shall be treated by chemical or mechanical means at least six months prior to a proposed burn, to kill or uproot the brush to ~~insure~~ ensure rapid combustion.

5.2.6 During Burn Season

All fires allowed under this Section shall be conducted only during the burn season as defined in Section 2.~~4~~13 of this Rule.

5.3 Additional Requirements for Forest Management and Range Improvement Burning

In addition to the requirements of Section 5.1 of this Rule, the following requirements apply to forest management and range improvement burning:

5.3.1 All materials to be burned during forest management and range improvement burning when permitted shall conform to the following requirements to ensure rapid burning and ignition and to minimize smoke generation:

5.3.1.1 Where economically and technically feasible, brush shall be treated by chemical or mechanical means at least six (6) months prior to a proposed burn, to kill or uproot the brush to ~~insure~~ ensure rapid combustion.

5.3.1.2 Unwanted trees over six inches in diameter expected to burn or those not effectively treated at the time of the brush treatment shall be felled at least three months prior to the burn, but a longer time may be required where conditions warrant.

5.4 Additional Requirements for Wildland Vegetation Management Burning

In addition to the requirements of Section 5.1 of this Rule, the following requirements apply to wildland vegetation management burning:

5.4.1 When a natural ignition occurs on a no-burn day, the initial “go/no-go” decision to manage the fire for resource benefit will be a “no-go” unless:

5.4.1.1 After consultation with the Air District, the Air District decides, for smoke management purposes, that the burn can be managed for resource benefit;
or

5.4.1.2 For periods of less than 24 hours, a reasonable effort has been made to contact the Air District, or if the Air District is not available, the California Air Resources Board.

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5.4.1.3 After 24 hours, the Air District has been contacted, or if the Air District is not available, the California Air Resources Board has been contacted and concurs that the burn can be managed for resource benefit.

5.4.2 A “no-go” decision does not mean that the fire must be extinguished, but that the fire cannot be considered as a prescribed fire.

5.4.3 For naturally-ignited wildland fires managed for resource benefits that are expected to exceed 10 acres in size, a smoke management plan must be submitted to the Air District within 72 hours of the start of the fire.

PART 6 ADDITIONAL REQUIREMENTS FOR BACKYARD BURNING

The purpose of this Part is to codify standards and requirements for backyard burning within the Air District. The provisions of this Part shall apply to all persons who perform backyard burning within the Air District.

6.1 Burning Hours

No backyard burning shall commence before 8:00 a.m. and no additional fuels may be added after 3:00 p.m. on any day. All burns must be extinguished by 4:00 p.m. on the same day.

6.2 Burn Pile Sizes

Burn piles are recommended to be no larger than 4-feet in diameter and 4-feet high. Burn pile size shall be consistent with local fire protection district requirements. Where a fire protection district has no published burn pile size, the individual conducting the burn should contact their fire protection district regarding recommended burn pile size for fire safety considerations.

6.3 Burn Season

Backyard burning shall only occur during the Burn Season as defined in Section 2.1311.

6.4 Fire Safety

The following fire safety requirements must be followed:

6.4.1 All flammable material and vegetation must be cleared within 10-feet of the outer edge of the burn pile,

6.4.2 A water source and appropriate fire fighting tools (shovel, rake, hoe, etc.) must be at the burn site location,

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6.4.3 An adult must be in attendance at all times until the fire is extinguished, ~~and no burning shall be undertaken unless weather conditions are such that burning can be considered safe.~~

6.4.4 No burning shall be undertaken unless weather conditions are such that burning can be considered safe.

6.4.5 The use of accelerants is prohibited in backyard burning.

6.5 Property Size

Backyard burning shall be limited to parcels ½ acre or greater, except in areas where curbside yard waste pick-up is not available. A waiver may be granted at the discretion of the Air District following a site inspection.

6.6 Distance from Structures

Backyard burning shall be conducted at least 100 feet from any residential or commercial structure on an adjacent property. A waiver may be granted at the discretion of the Air District following a site inspection.

6.7 Smoke Impacts

6.7.1 Smoke or ash from Backyard burns shall not cause a public nuisance per Rule 402. Backyard burns shall be extinguished, at the request of Air District staff, upon determination of a public nuisance.

6.7.2 Piled materials consisting of grass clippings, green weeds, leaves, conifer needles and redwood duff, are prohibited from being burned due to their potential for excessive smoke emissions. Leaves or needles attached to branches can be burned if the branches have been dried in accordance with Section 3.6.7.

~~6.7.11.1.1 Piled materials consisting of grass clippings, green weeds, leaves, conifer needles, and redwood duff, are prohibited from being burned due to their potential for excessive smoke emissions. Leaves or needles attached to branches can be burned if the branches have been dried in accordance with Section 3.7.~~

6.7.3 Burning of tree stumps or root balls is prohibited.

6.7.4 Vegetation greater than six-inches (6”) in diameter that continues to burn beyond the designated burn hours does not relieve the permittee from smoke impact liability.

PART 7 ADDITIONAL REQUIREMENTS FOR RESIDENTIAL BURNING

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The purpose of this Part is to codify standards and requirements for residential burning within the Air District. The provisions of this Part shall apply to all persons who perform residential burning within the Air District.

7.1 Requirements for All Residential Burning

On burn days only, fires for disposal of dry, non-glossy paper and cardboard originating from and being burned on the premises of a single or two-family dwelling (residential burning) if that dwelling meets all the following criteria:

- 7.1.1 the single or two-family dwelling is not in an incorporated place; and
- 7.1.2 the single or two-family dwelling lies within the boundaries of a Census Zip Code within the Air District where the population density is equal to or less than 3.0 people per square mile, as calculated from the last decennial United States Census data; and the single or two-family dwelling is in an area not served on a weekly basis by an organized waste disposal service; and the single or two-family dwelling does not lie within the boundary of a jurisdiction which prohibits the burning of dry, non-glossy paper and cardboard. The current zip codes that meet the population density criteria are: 95043, 93210, 93451, and 93461.

PART 8 ADDITIONAL REQUIREMENTS FOR FIRES WITHIN THE MONTEREY PENINSULA/CARMEL VALLEY SMOKE SENSITIVE AREA

Notwithstanding other provisions of this Rule, open burning, except agricultural burning, is prohibited within the Monterey Peninsula/ Carmel Valley Smoke Sensitive Area (MP/CV SSA) as defined in Section ~~2.29-37~~ unless all the following conditions are met:

- 8.1 Such burning is permitted only in those local fire protection agency jurisdictions which have adopted enforceable local fire protection agency rules that limit the total number of burns, including agricultural burns, to no more than 25 such burns per burn day. Local fire protection agency rules shall be deemed to comply with this Section only if such rules provide that the local fire protection agency shall maintain a log of each permittee authorized by said agency to burn on any given burn day, and shall assign either a daily authorization number or a local agency burn permit number. Such rules shall further provide that said log of 25 or fewer authorized permittees per burn day shall be made available to the Air District upon request, and shall be maintained for a period not less than 90 calendar days from the date of each burn day. Burning delineated in this Section and agricultural burning is permitted only after a burn permit has been obtained from the proper local fire protection agency. The burn permit is valid:
 - 8.1.1. only on burn days as determined by the California Air Resources Board and the Air District; and,

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- 8.1.2. upon receipt of a daily authorization number issued by the local fire protection agency having jurisdiction.
- 8.2 Upon written approval of the Air Pollution Control Officer, any local fire protection agency subject to the provisions of Section 8.1 may delegate to the Air District its responsibility and authority to issue daily authorization numbers which therefore validate on a daily basis burn permits issued pursuant to Section 8.1. Should such delegation occur, the issuance or denial of a daily authorization number by the Air District shall respectively validate or invalidate the subject burn permit for that respective day as if such action had occurred by the local fire protection agency having jurisdiction in accordance with other provisions of this Rule.
- 8.3 The defined perimeter of the MP/CV SSA, and the limit on number of burns each day shall be reviewed by the Air District periodically and may be reestablished, if deemed appropriate, based on recent meteorological and open burning related data.



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**PART 9 ADDITIONAL REQUIREMENTS FOR FIRES WITHIN THE SAN LORENZO
VALLEY SMOKE SENSITIVE AREA**

Notwithstanding other provisions of this Rule, open burning, except agricultural burning, is prohibited within the San Lorenzo Valley Smoke Sensitive Area (SLV SSA) as defined in Section 2.41 unless all the following conditions are met:

- 9.1 Burning is limited within the SLV SSA to no more than four (4) permitted backyard burns per day for each local fire district, for a total not to exceed 20 permitted backyard burns per day.

The SLV SSA fire districts are:

- Zayante Fire Protection District (FPD)
- Felton FPD
- Ben Lomond FPD
- Boulder Creek FPD
- California Department of Forestry and Fire Protection

- 9.2 Burning delineated in this Section and agricultural burning is authorized only after a smoke management permit has been approved by the Air District. The permit is valid:

9.2.1 only on burn days as determined by the California Air Resources Board or the Air District; and,

9.2.2 only for the day that it is authorized.

- 9.3 Backyard burning within the SLV SSA shall be limited to parcels one acre or greater, except in areas where yard waste pick-up is not available. A waiver may be granted at the discretion of the Air District following a site inspection.

- 9.4 Additional restrictions may be set by the Air District for the SLV SSA even on California Air Resources Board declared “burn days”.

- 9.5 The defined perimeter of the SLV SSA, and the limit on number of burns each day shall be reviewed periodically by the Air District and may be modified, if deemed appropriate, based on meteorological and open burning related data.

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Figure 21. San Lorenzo Valley Smoke Sensitive Area

